

FILED
IN THE IOWA DISTRICT COURT FOR POLK COUNTY

BRUCE ALLEMAN,

Petitioner,

vs.

IOWA PUBLIC EMPLOYMENT
RELATIONS BOARD,

Respondent.

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Case No. AA 2794

JEROME L. WEISS
CLERK DISTRICT COURT

**RULING ON PETITION FOR
JUDICIAL REVIEW**

On November 25, 1996 the Court heard arguments on this Petition for Judicial Review. Petitioner was represented by his attorney, John O. Haraldson, and Respondent was represented by its attorney, Jan Berry. The Court, after hearing the arguments, reviewing the file and briefs, and being otherwise informed in the premises, enters the following ruling.

RULING

I. ISSUE

Whether the Board properly rejected Alleman's request for a contested case hearing on the basis that it was not timely filed, even though his request was placed in a United States Postal Service mailbox within the thirty-day appeal period, and the postal service failed to collect mail from the box on that day because of adverse weather conditions.

II. STANDARD OF REVIEW ON ADMINISTRATIVE APPEAL

Judicial review of the actions of an administrative agency is governed by the standards of Iowa Code § 17A.19. The court acts in an appellate capacity by reviewing the agency's decision solely to correct any errors of law. *Gaffney v. Department of Employment Serv.*, 540 N.W.2d 430, 433 (Iowa 1995). Nearly all disputes within the scope of administrative law are won or lost at the

agency level; the cardinal rule of administrative law is that judgment calls are the province of the administrative tribunal, not the courts. *Sellers v. Employment Appeal Bd.*, 531 N.W.2d 645, 646 (Iowa Ct. App. 1995).

The agency's final decision must be affirmed if it is supported by substantial evidence and is correct in its conclusions of law. *Glowacki v. Iowa Bd. of Medical Examiners*, 516 N.W.2d 881, 884 (Iowa 1994); Iowa Code § 17A.19(8)(e). Evidence is substantial if a reasonable person could accept it as adequate to reach the same findings as the agency. *Pointer v. Iowa Dep't of Trans., Motor Vehicle Div.*, 546 N.W.2d 623, 625 (Iowa 1996). When deciding whether an agency made an error of law, the court gives some weight to the agency's construction of a statute, but it is not bound by this construction. *Super Valu Stores v. Iowa Dep't of Revenue*, 479 N.W.2d 255, 258 (Iowa 1991). It is ultimately the duty of the court to determine matters of law, including the interpretation of a statute or an agency rule interpreting a statute. *Hollinrake v. Iowa Law Enforcement Acad.*, 452 N.W.2d 598, 601 (Iowa 1990).

III. STATEMENT OF FACTS

At the time this dispute arose Petitioner, Bruce Alleman, was employed with the Iowa Department of Revenue and Finance as a Public Supervisor II. On July 27, 1995 he was given a two-day disciplinary suspension for failing to follow the instructions of his supervisor. He promptly filed a grievance with the director of the Iowa Department of Personnel, as provided for in Iowa Code § 19A.14(1). Several weeks later, Alleman was again suspended, this time for a five-day period, and once again he filed a grievance with the director. The director consolidated Alleman's grievances, and ultimately both suspensions were upheld on December 27, 1995.

Alleman then sought under Iowa Code § 19A.14(1) to appeal the director's decision to the

Public Employment Relations Board (the "Board"), which is the Respondent in this case. Under that statute, an employee who seeks to appeal an adverse decision to the Board must do so within thirty days following the director's decision.

On January 26, 1996 (the thirtieth day), Alleman's counsel placed an envelope containing Alleman's appeal forms and attachments into a United States Postal Service mailbox in West Des Moines, Iowa. This was done early in the afternoon of that day, before the scheduled pickup time of 4:30 p.m. for that mailbox. Because of a severe winter storm which struck the area, however, the postal service did not collect the mail deposited in that mailbox on either January 26 (Friday) or January 27 (Saturday), instead waiting until January 29. Also, Alleman's attorney attempted to travel to the PERB offices, but was unable to reach it to file the Petition prior to the closing at its usual hour of 4:30 p.m. Petitioner concedes that the PERB offices remained open until 4:30 p.m. that date, despite that other state offices closed early because of the storm. (Petitioner's Brief, page 6.) Upon learning that Alleman's appeal was not received by the Board on January 29, Alleman's counsel personally delivered copies of the documents later that day. The set of appeal forms originally mailed on January 27 did not arrive at the Board's office until January 31, 1996.

On July 12, 1996 the Board dismissed Alleman's appeal on the basis that he did not file it in a timely fashion. Alleman contends that this was error and seeks reversal of the Board's decision.

IV. DISCUSSION

Under Iowa Code § 19A.14 most state employees (including Alleman) are given the right to file a grievance with the Department of Personnel in response to any disciplinary action taken against them. The grievance process involves three steps, with the final step taking place before the director of the department. After exhausting the three-step process, an employee who remains aggrieved may

appeal the director's decision to the Board within thirty days. Iowa Code § 19A.14(1). It is before the Board where an employee first has the right to an evidentiary hearing, 621 Iowa Admin. Code r. 11.5(1), which consequently means that it is at this stage where the "contested case proceeding" begins. See Iowa Code § 17A.2(5) (including in the definition of "contested case" the requirement of an opportunity for an evidentiary hearing); 581 Iowa Admin. Code r. 12.1 (stating that the grievance process is informal and does not constitute a contested case). Because the filing of the appeal begins the contested case, the time and manner of filing are governed by Iowa Code § 17A.12(9), which states:

Unless otherwise provided by statute, a person's request or demand for a contested case proceeding shall be in writing, delivered to the agency by United States postal service or personal service and shall be considered as filed with the agency *on the date of the United States postal service postmark or the date personal service is made.* (Emphasis added.)

The Board relied upon § 17A.12(9) to dismiss Alleman's appeal, which admittedly was postmarked three days after the thirty-day appeal period had expired. Alleman claims, however, that the only reason his appeal was postmarked after the thirty-day period was the postal service's failure to collect mail from the mailbox in the wake of a severe winter storm. He claims that in a situation such as the one at bar, he should not be held to suffer the harsh consequences imposed by a strict, literal application of the filing rules found in § 17A.12(9).

In general, a document or a filing is considered "filed" when the filing party does all acts which are required of him under the filing statute, regardless of any duties which remain to be performed by the public officer who accepts the filing. See, e.g., *Wulff v. Wulff*, 500 N.W.2d 841, 845 (Neb. 1993) (stating that "where a duty is placed on a public official to perform acts necessary to perfect an appeal, his failure to perform cannot be charged to the litigants or operate to defeat the

appeal"); *Revenue Cabinet v. JRS Data Systems, Inc.*, 738 S.W.2d 828, 830 (Ky Ct. App. 1987) ("filing" occurs only at the time a document is properly delivered to the appropriate office); cf. *Prairie Pella, Inc. v. Allbee*, No. CE 33228 (Iowa Dist. Ct. August 29, 1996) (applying general rule to the filing of a mechanic's lien). With regard to the commencement of a contested case proceeding, however, the general rule is replaced by Iowa Code § 17A.12(9), which specifically provides that when a filing is effected through the mail, the date of filing is considered to be the date of the postmark. Because there exists no statute, rule, or postal regulation which requires a mailing to be postmarked on the same day it is collected by the postal service, Alleman cannot argue that his appeal was in some way constructively filed when he placed it in the mailbox before the scheduled collection time. Although it is likely that his appeal would have been postmarked on the thirtieth day had the mail been collected, the postal service is not an agent of the Board and the deposit of the appeal with the postal service does not constitute a "filing." This comports with the general rule that whenever a filing is authorized to be made through the postal service, the "filing" does not occur until actual delivery to the agency, unless there is a statute (such as Iowa Code § 17A.12(9)) to the contrary. See, e.g., *JRS Data Systems*, 738 S.W.2d at 830; *Garrett v. Director of Div. of Employment Sec.*, 475 N.E.2d 1221, 1223 (Mass. 1985); *General Motors Corp. v. City of Detroit*, 368 N.W.2d 739, 742 (Mich Ct. App. 1985).

Perhaps recognizing that Iowa law does not allow a filing to be constructively "filed" at the time it is mailed, Alleman has focused his argument on what he claims is an "exceptional circumstances" exception to the thirty-day period for appeal to the Board. His authority for this exception is *Brown v. Public Employment Relations Bd.*, 345 N.W.2d 88, 94 (Iowa 1984), where the Iowa Supreme Court stated that it has "consistently held that the party relying on exceptional

circumstances to avoid a statute of limitations must bear the burden of proving the facts which the exception requires.” Alleman claims that this phrase is evidence that the court recognizes a general “exceptional circumstances” exception to statutes of limitations. The Court, however, does not agree. In *Brown*, the supreme court cited two cases for the statement which is quoted above. The first case, *Jacobson v. Union Story Trust & Savings Bank*, 338 N.W.2d 161, 164 (Iowa 1983), dealt with the relation-back doctrine under Iowa R.Civ.P. 89, which allows an amendment to a suit to relate back in time to the filing of the original suit, even if the limitations period has expired, if certain conditions are met. The second case, *Franzen v. Deere & Co.*, 334 N.W.2d 730, 732 (Iowa 1983), dealt with the discovery rule, a long-standing doctrine by which a statute of limitations does not begin to run until the injury is discovered or until it should have been discovered in the exercise of reasonable diligence, whichever comes first. Neither of these two cases support a more general exception which *extends* a period of limitations whenever a party misses a filing deadline due to some circumstance beyond his control.

Although the equities of this case may lean in Alleman’s favor, the law does not. “While courts may not look with favor upon a defense of statute of limitations, it is also true that where no exception or exemption is found in the statute of limitations no such exemption or extension exists.” *Willow Tree Investments, Inc. v. Wilhelm*, 465 N.W.2d 849, 851 (Iowa 1991). Once a statute of limitations begins to run, nothing can toll it except a statutory provision which allows tolling. *Overbeck v. Dillaber*, 165 N.W.2d 795, 796 (Iowa 1969). Alleman has not pointed to any Iowa case or statute which allows the tolling that he seeks. He places great emphasis on the case of *Houlihan v. Employment Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996), but in that case the agency rule governing the time allotted for appeal contained a “good cause” exception. *Id.* at 865. Here the governing rules

and statutes contain no such exception, and the Court declines Alleman's invitation to interpose one.

The Court acknowledges that the result it has reached does seem to be unfair. Had postal operations not been affected by the storm on January 26, 1996 Alleman's appeal likely would have been postmarked within the thirty-day period. The Court also is aware that had his appeal been collected by the postal service on the 26th of January, the earliest it probably would have reached the Board's offices would have been the 29th, which is in fact the same day on which Alleman's counsel delivered a copy of the appeal to the Board. Notwithstanding these possibilities and "what ifs," the fact remains that Alleman did not satisfy the statutory scheme for perfecting his appeal to the Board. Unfortunately, this case once again illustrates the risks involved when parties and counsel wait until the final day of a limitations period to initiate a filing. *See Jacobson*, 338 N.W.2d at 162 (acknowledging the risks involved in waiting until the last day of a limitations period). Until the statutory steps in initiating the appeal were satisfied, Alleman bore the burden of making sure that those steps were actually taken, and bore any risk that some intervening force would frustrate his efforts. This Court does not feel it appropriate, without statutory authority, to delve into where to draw the line and make decisions on the quality of an exception.

ORDER

IT IS THE ORDER OF THE COURT that the decision of the Public Employment Relations Board dismissing Bruce Alleman's appeal is AFFIRMED.

IT IS SO ORDERED this 13th day of January, 1997.

A handwritten signature in black ink, appearing to read "Richard G. Blane, II", is written over a horizontal line.

RICHARD G. BLANE, II, District Judge
Fifth Judicial District of Iowa

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